

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

CARL QUAST,  
*Plaintiff,*

v.

LOWES HOME CENTER,  
*Defendant.*

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CIVIL CASE NO. 5:21-cv-00518  
JURY TRIAL DEMANDED

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DEFENDANT LOWES HOME CENTER'S  
*(incorrectly named and an improper party)*  
NOTICE OF REMOVAL

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Pursuant to 28 U.S.C. § 1441, LOWES HOME CENTER *(incorrectly named and an improper party)* (hereinafter "LOWES") removes to this Court, the state court action described in Paragraph 1 below. Pursuant to 28 U.S.C. § 1446(a), LOWES sets forth the following "short and plain statement of the grounds for removal."

I.  
**THE REMOVED CASE**

1. The removed case is a civil action filed in the 25<sup>th</sup> Judicial District Court of Guadalupe County, Texas, on May 3, 2021, styled *Carl Quast v. Lowes Home Center*, under Cause No. 21-0932-CV-E (the "State Court Action").

II.  
**DOCUMENTS FROM REMOVED ACTION**

2. Pursuant to FEDERAL RULE OF CIVIL PROCEDURE 81 and 28 U.S.C. § 1446(a), LOWES attaches the following documents to this Notice of Removal:

- (a) A list of all parties in the case, their party type and current status;
- (b) a civil cover sheet and certified copy of the state court docket sheet; a copy of all pleadings that assert causes of action (e.g., complaints, amended complaints, supplemental complaints, petitions, counter-claims, cross-actions, third party actions, interventions, etc.); all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court, as required by 28 U.S.C. § 1446(a);
- (c) a complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number and party or parties represented by him/her;
- (d) A record of which parties have requested trial by jury; and
- (e) The name and address of the court from which the case is being removed.

### III. REMOVAL PROCEDURE

3. Except as otherwise expressly provided by Act of Congress, any civil action brought in a state court of which the district courts of the United States have original jurisdiction may be removed to the United States District Courts for the district and division embracing the place where the action is pending. 28 U.S.C. § 1441. The San Antonio Division of the Western District Court of Texas is the United States district and division embracing Guadalupe County, Texas, and the county in which the State Court Action is pending.

4. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings and orders in the State Court Action as of the date of this pleading are attached hereto as ***Exhibit "B"*** and incorporated herein for all purposes.

5. Defendant will promptly give all parties written notice of the filing of this Notice of Removal and will promptly file a copy of this Notice of Removal with the Clerk of the 25<sup>th</sup> Judicial District Court, of Guadalupe County, Texas, where the State Court Action is currently pending.

**IV.**  
**REMOVAL IS TIMELY**

6. According to the State Court Action file, LOWES was served with a copy of Plaintiff's Original Petition ("Petition") on May 5, 2021, via personal service.

7. Since the thirtieth day after service of the Petition on LOWES falls on June 4, 2021, this Notice of Removal is being timely filed within the time limits specified in 28 U.S.C. § 1446(b).

**V.**  
**VENUE IS PROPER**

8. The United States District Court for the Western District of Texas – San Antonio Division, is the proper venue for removal of the State Court Action pursuant to 28 U.S.C. § 1441(a) because the 25<sup>th</sup> Judicial District Court of Guadalupe County, Texas, is located within the jurisdiction of the United States District Court for the Western District of Texas – San Antonio Division.

**VI.**  
**DIVERSITY OF CITIZENSHIP EXISTS**

9. This is a civil action relating to a negligence claim that falls under the Court's original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

10. As admitted in the Petition, Plaintiff is a resident of Guadalupe County, Texas and is domiciled there.<sup>1</sup>

11. LOWES HOME CENTER, is incorrectly named because it is a non-existent entity and is thus an improper party to this lawsuit. The correct legal name is Lowe's Home Centers, LLC, which is a foreign Limited Liability Company organized and existing under the laws of the State of North Carolina. The Limited Liability Company is comprised of six managing members, Akinjide Falaki who is domiciled in and a resident of the State of North Carolina; David R. Green, who is domiciled in and a resident of the State of North Carolina; Beth R. MacDonald who is domiciled in and a resident of the State of North Carolina, Tiffany L. Mason, who is domiciled in and is a resident of the State of North Carolina; Brandon J. Sink, who is domiciled in and a resident of the State of North Carolina, and Gary White, who is domiciled in and a resident of the State of North Carolina. Additionally, LOWES principal office is located at 1605 Curtis Bridge Road in Wilkesboro, North Carolina 28687. Pursuant to 28 U.S.C. § 1332(c)(1), LOWES is not a citizen of the State of Texas.

12. Because the Plaintiff is a resident of the State of Texas and Defendant LOWE'S HOME CENTERS, LLC, the proper name of the named Defendant and all of its members are residents of the State of North Carolina, complete diversity of citizenship exists pursuant to 28 U.S.C. § 1332.

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<sup>1</sup> *Id.* Plaintiff's Original Petition at p. 1, ¶ 1.

**VII.**  
**THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED**

13. Plaintiff alleges in her Petition that he seeks “monetary relief over Two Hundred Thousand and 00/100 Dollars (\$200,000.00) but not more than Five Million and 00/100 Dollars (\$5,000,000.00).”<sup>2</sup>

14. Based on the aforementioned facts, the State Court Action may be removed to this Court by LOWES in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this is a civil action pending within the jurisdiction of the United States District Court for the Western District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy as specifically pled by the Plaintiff, exceeds \$75,000, exclusive of interest and costs.

**VIII.**  
**FILING OF REMOVAL PAPERS**

15. Pursuant to 28 U.S.C. § 1446(d), LOWES is providing written notice of the filing of this Notice of Removal to all counsel of record and is filing a copy of this Notice with the Clerk of the 25<sup>th</sup> Judicial District Court of Guadalupe County, Texas, in which this action was originally commenced.

**IX.**  
**CONCLUSION**

16. LOWES HOME CENTER (*incorrectly named and an improper party*) hereby removes the above-captioned action from the 25<sup>th</sup> Judicial District Court of Guadalupe County, Texas, and requests that further proceedings be conducted in the

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<sup>2</sup> See, "Plaintiff's Original Petition" p. 5, ¶ 18.

United States District Court for the Western District of Texas – Guadalupe Division,  
as provided by law.

Respectfully submitted,

**MAYER LLP**

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By: /s/ Zach T. Mayer

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**ATTORNEYS FOR DEFENDANT**

**LOWES HOME CENTER**

*(incorrectly named and an improper party)*

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on June 2, 2021, the foregoing *Notice of Removal* was electronically filed, as required by the United States District Court for the Western District of Texas, using the Court's CM/ECF filing system, which will provide notice and a copy of this document, with attachments, to the following, who are indicated to be registered ECF filers in the United States District Court for the Western District of Texas:

Shakila Miller-Brewer  
LAW OFFICES OF THOMAS J. HENRY  
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San Antonio, Texas 78246

*Counsel for Plaintiff*

- ☐ E-MAIL ([smillerbrewer-svc@thomasjhenrylaw.com](mailto:smillerbrewer-svc@thomasjhenrylaw.com))
- ☐ HAND DELIVERY
- ☐ FACSIMILE
- ☐ OVERNIGHT MAIL
- ☐ REGULAR, FIRST CLASS MAIL
- ☒ CM/ECF
- ☐ CERTIFIED MAIL/RETURN RECEIPT REQUESTED

/s/ Zach T. Mayer

Zach T. Mayer